

**DEPARTMENT OF EDUCATION
Montpelier, Vermont**

TEAM: Finance

ITEM: Will the State Board of Education grant a variance and approve the construction aid application for the recently completed mold remediation project at Milton Elementary School in Milton Town School District?

RECOMMENDED ACTION: That the State Board of Education grant a variance and approve the construction aid application for the recently completed mold remediation project at Milton Elementary School in Milton Town School District.

STATUTORY AUTHORITY: Title 16, V.S.A. §§3447-3450, as amended

BACKGROUND INFORMATION:

1. State Board Rule 6203 details the process through which a school district may apply for a variance.
2. Per State Board Rule 6123, plans and specifications for a construction aid project must be prepared by registered architects and professional engineers. The requirements for a final application, as detailed in Rule 6127, include the plans as noted above, evidence of an independent clerk-of-the-works, and a performance bond covering the contractor. Rule 6132 requires the builder to furnish the school board with a full set of as-built plans and specifications upon completion of the project.
3. The Milton Town School District has submitted to the Department of Education a request for a variance from State Board Rules 6123, 6127 and 6132, dated November 12, 2007, attached. The school district did not comply with the rules but is seeking approval for emergency construction aid.
4. The project consisted of mold abatement, removal of contaminated building materials, and reconstruction of all areas affected by the mold contamination.
5. Department of Education Staff met with the environmental consultants, contractors, and school administrators involved with Milton's mold remediation project. In order to identify and eliminate hazards, and render the impacted space useable as quickly as possible, it appears that multiple phases of work were being performed in the building simultaneously, and that good communication on the site resulted in a completed project in a very short time frame. Currently, the space is free of dangerous levels of mold and is serving building occupants satisfactorily.

COST IMPLICATIONS:

1. The total project cost is approximately \$4,600,000.
2. If the variance is granted and the application is approved, the school district will be eligible for school construction aid estimated at \$1,100,000., paid out of state bonded funds. If the variance is not granted, the school district will not be reimbursed for these construction costs. Those unreimbursed costs will increase the district's education spending per equalized pupil amount and its homestead tax rate.

COMMISSIONER'S RECOMMENDATION:

1. The Commissioner of Education recommends this request for variance be granted and the application for emergency construction aid be approved.

STAFF AVAILABLE: Cathy Hilgendorf, School Construction Consultant
Cassandra Ryan, Admin. Asst. School Construction
Bill Talbott, CFO

***See separately attached pdf file of the Milton Town School District's request for variance.**

State Board of Education Manual of Rules and Practices

EXCERPT

6203 The school board shall submit the following when requesting a variance:

- 1) Evidence that strict compliance with these rules could entail practical difficulty, unnecessary cost or, hardships or is otherwise unwarranted.
- 2) Evidence that the alternative specification or procedure meets the intent of the rule.

6123 Construction Design

Plans and specifications for a construction aid project shall be prepared by a registered architect. Unless otherwise approved by the Commissioner and subject to state licensing requirements, plans for construction projects which do not impact or alter instructional areas shall be prepared by a registered architect or a registered professional engineer.

When appropriate, the Department of Education may request a review by the Department of Aging and Disabilities to assess the architectural accessibility of a proposed project.

6127 Final Application

A school district seeking construction shall file a final application on a form prescribed by the Commissioner that provides evidence of the following:

1. Approval of a preliminary application consistent with rule 6116.
2. A review by the Agency of Natural Resources of the water supply and sewage disposal conditions at the existing site that the board is considering.
3. Approval of the educational specifications by the Commissioner of Education
4. Completion of the preliminary design work for the project by a registered architect or engineer as appropriate
5. A determination of the maximum eligible cost for state capital construction aid by the Department of Education for the proposed project
6. A successful vote consistent with Title 24 V.S.A. §1758(b) for financing 100% of the cost of the project.

7. Financing of the project and a system of cost accounting for the project separate from the accounting system for the district.
8. Final plans. The school shall submit to the Commissioner copies of the construction plans either in computer aided design (CAD) format, if used, or, if not, in the form submitted by the architect or engineer to the school board or board of trustees.
9. Compliance with public bidding procedures consistent with 16 V.S.A. §559 and Rules 6300-6400.
10. Employ a clerk-of-the-works to oversee the completion of the project. The clerk-of-the-works may not be a current employee or, without the approval of the Commissioner, a former employee of the district, or the contractor, construction manager, architect or engineer for the project.
11. Adequate builder's risk insurance and professional liability insurance.
12. Unless otherwise permitted by the Commissioner, a performance bond or irrevocable letter of credit equal to or exceeding the amount of the construction contract for the project covering the contractor or construction manager.
13. Approval from any governmental agency or authority with rules that affect school construction and from which approval is required.
14. Other information deemed necessary by the State Board for the type of construction aid project.

6132 Completion of Construction:

Upon completion of a project the builder shall furnish to the school board a full set of plans and specifications for the project as built.